IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.1025 of 2006
With
FIRST APPEAL No.2479 of 2006
To
FIRST APPEAL No.2512 of 2006
With
CROSS OBJECTION No.51 of 2006
To
CROSS OBJECTION No.85 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
&
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPL. LAQ OFFICER & ANR. - Appellants
Versus
BHIKHABHAI NATHABHAI - Respondents

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Appearance :
MR SS SHAH GP for Appellants in FA Nos.1025/06 & 2498/06 to 2512/06 as well as for respondents in X-Obj. Nos.51 and 72 to 85 of 2006.
AND
MR SS PATEL AGP for Appellants in FA Nos.2479 to 2497 of 2006 as well as for respondents in X-Obj. Nos.52 of 2006 to 71 of 2006.
MR JAY P AMIN for Original Claimants in First Appeals & X-Objections.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 14/08/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

The above numbered appeals are filed by (1) Special Land Acquisition Officer, Kheda, and (2) Executive Engineer, Express Way, National Highway No.8, Ahmedabad, under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, against common judgment and award dated December 29, 2001 rendered by the learned 4th Joint Civil Judge (S.D.), Nadiad, in Land Acquisition Case Nos.925 to 927 of 1996; 628 & 629 of 1996; 930 to 933 of 1996 and Land Acquisition Case Nos.940 of 1996 to 967 of 1996, by which the claimants are awarded additional compensation at the rate of Rs.49.50 ps. per square metre over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.4.50 ps. per square metre for their acquired lands in Land Acquisition Case Nos.925 to 933 of 1996 and 956 to 967 of 1996; and Rs.51/- per square metre over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of

Rs.3/- per square metre for their acquired land in Land Acquisition Case Nos.940 to 955 of 1996 whereas the claimants have filed Cross Objections under the provisions of the Code of Civil Procedure, 1908, and claimed that the Reference Court should have awarded additional compensation to them at the rate of Rs.55.50 square metre, i.e. in all Rs.60/- per square metre for their acquired lands.

As the appeals and cross-objections are directed against the same judgment and award of the Reference Court, this Court proposes to dispose them of by this common judgment.

2. A proposal was received by the State Government to acquire agricultural lands of Village Sokhada, Taluka: Matar, District: Kheda, for the public purpose of project of National Highway No.8. On consideration of the said proposal, the State Government was satisfied that agricultural lands of Village Sokhada were likely to be needed for the said public purpose. Therefore, three different notifications were issued under Section 4(1) of the

Act and published in the official gazette on October 21, 1993, December 23, 1993 and January 6, 1994 declaring the intention of the State Government to acquire agricultural lands of Village Sokhada. The landowners were thereafter served with the notices as required by law. They objected to the proposed acquisition. After considering the objections, two reports as contemplated by Section 5A (2) of the Act were forwarded by the Special Land Acquisition Officer to the State Government. On scrutiny of the said reports, the State Government was satisfied that agricultural lands of Village Sokhada specified in notification published under Section 4(1) of the Act on October 21, 1993 as well as notifications published in the Government gazette on December 23, 1993 and January 6, 1994 were needed for the public purpose of Project of National Highway No.8. Therefore, two declarations under Section 6 of the Act were made, which were published in the official gazette on March 24, 1994 and June 9, 1994. The interested persons were thereafter served with the notices for determination of compensation payable to them. They appeared before the Special Land

Acquisition Officer and claimed the compensation at the rate of Rs.100/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer by three separate awards dated January 10, 1996; January 22, 1996; and, January 25, 1996, offered to the claimants compensation at the rate of Rs.4.50 paise per square metre and Rs.3/- per square metre. The claimants were of the opinion that the compensation offered by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Kheda at Nadiad, where they were numbered as noticed earlier.

3. On behalf of the claimants, witness Bhikhabhai Nathabhai Patel was examined at Exhibit 61. The said witness stated in his testimony that the lands acquired were highly fertile and that each claimant was taking three crops in a year because

irrigation facilities were available throughout the year to the lands acquired. According to this witness, about 55 to 60 private tube-wells and 5 government tube-wells were constructed near the acquired lands and, therefore, the claimants were able to raise crops of paddy, millet, vegetables, etc. throughout the year. It was also claimed by the said witness that each claimant was taking crop of wheat during the winter season. What was mentioned by him was that the village was fully developed in the sense that there was a pipe factory and facility of cold-storage was available in the village over and above primary school, high school, cooperative society, etc. According to this witness, his village Sokhada was at a distance of half a kilometre away from Kheda town and was situated on Kheda-Matar road. It was asserted by the witness that the lands of village Vansar were also acquired for the National Highway with reference to which, the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.4.50 paise per square metre and in references, the Reference Court had awarded compensation to the claimants at the rate of

Rs.72/- per square metre, which was challenged by the acquiring authority before the High Court and as the High Court had reduced the amount of compensation payable to the claimants of Village Vansar to Rs.60/- per square metre, the claimants in the instant cases should also be awarded compensation on the said basis. It was stressed by the witness in his testimony that the lands, which were acquired in the instant cases from Village Sokhada, were more fertile than the lands which were earlier acquired from Village Vansar and that the boundaries of Village Sokhada and Village Vansar were common.

In cross-examination, it was stated by the witness that he had not maintained any account relating to sale of vegetables and grains by him. In the cross-examination also, it was maintained by the witness that 50 to 60 tube-wells were available in the village for the purpose of irrigation. The suggestion made on behalf of the acquiring authority that there was no plastic factory or rice factory in the village, was also emphatically denied by him. The suggestion made to the witness that the lands of

Village Sokhada were inferior in quality to the lands of Village Vansar, was emphatically denied by him. Similarly, the suggestion made to the witness that the Special Land Acquisition Officer had determined correct market value of the lands acquired was also denied by him.

4. It may be mentioned that no oral or documentary evidence was adduced either by the Special Land Acquisition Officer or by the appellant No.2, i.e. acquiring body, for consideration of the Reference Court.

5. On appreciation of the evidence led by the claimants, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of Village Vansar, as modified by the High Court, was a relevant piece of evidence for the purpose of determining the market value of the lands acquired from Village Sokhada. It was noticed by the Reference Court that the agricultural lands of Village Vansar were acquired for the same purpose for which agricultural lands were acquired in

the instant case. The Reference Court further deduced that the boundaries of Village Sokhada and Village Vansar were common and, therefore, the previous award of the Reference Court relating to the lands of Village Vansar was good guidance for the purpose of determining the market value of the lands acquired from Village Sokhada. However, the learned Judge of the Reference Court was of the opinion that the claimants had not claimed compensation on the yield basis and, therefore, the claim advanced by the witness Bhikhabhai Nathabhai that each claimant was earning net income of Rs.80,000=00 per *vigha* per year from sale of agricultural produces, did not deserve acceptance. The learned Judge further noticed that Village Sokhada was not situated on Kheda-Matar Road nor National Highway was passing nearby the village nor there was commercial development along the road side. The Reference Court referred to the decision of the Supreme Court in the case of ***Kanvar Singh & Ors. vs. Union of India, A.I.R. 1999 SC 317*** and held that in view of different situations of the two villages and potentiality of the lands acquired, 10% deduction was required to be made from the price of the lands

of Village Vansar as indicated in the previous award, which was subsequently modified by the High Court. In the ultimate analysis, the Reference Court has awarded the total compensation of Rs.54/- per square metre to the claimants including the compensation awarded to the claimants by the Special Land Acquisition Officer at the rate of Rs.4.50 paise per square metre and Rs.3/- per square metre, vide common judgment and award dated December 29, 2001 giving rise to the above numbered proceedings.

6. Mr.S.S.Shah, learned Government Pleader, with Mr.S.S.Patel, learned Assistant Government Pleader for the appellants, argued that Village Sokhada was situated at a distance of half a kilometre from Kheda-Matar Road and as there was no development in the Village, the Reference Court was not justified in granting additional compensation of Rs.49.50 paise per square metre and Rs.51/- per square metre to the claimants. The learned counsel for the appellants emphasized that the previous award of the Reference Court relating to the lands of Village Vansar, as modified by the High Court, was

not a comparable instance at all and, therefore, the same could not have been relied upon by the Reference Court while awarding additional compensation to the claimants. What was maintained before the Court by the learned counsel for the appellants was that no positive evidence was led by the claimants to establish that the fertility of the lands acquired from Village Vansar was similar to that of the lands acquired in the instant case from Village Sokhada, and as the previous award did not furnish good guidance for determining the market value of the lands acquired from Village Sokhada, reliance placed thereon was erroneous. According to the learned counsel for the appellants, wrong principles of law have been applied by the Reference Court to the proved facts while determining the market value of the lands acquired in the instant cases and, therefore, the award impugned in the appeals deserves to be set aside. It was argued that the sale instance referred to by the Special Land Acquisition Officer in his award should have been taken into consideration by the Reference Court while determining the market value of the lands acquired in

the instant cases, but the previous award, which was not relevant at all for the purpose of determining the market value of the lands acquired from Village Sokhada, could not have been relied upon and, therefore, the appeals should accepted.

7. Mr.Jay P. Amin, learned counsel for the claimants, contended that the substantive evidence led on behalf of the claimants that the boundaries of Village Vansar and Village Sokhada were common and that the lands of Village Sokhada were more fertile than the lands of Village Vansar could not be demonstrated to be untrue and, therefore, the Reference Court was justified in placing reliance on the previous award of the Reference Court relating to the lands of Village Vansar for the purpose of assessing the market value of the lands acquired from Village Sokhada. The learned counsel emphasised that the evidence on record establishes that not only the lands previously acquired from Village Vansar were similar to the lands acquired from Village Sokhada, but topography, potentiality and advantages attached to the lands earlier acquired and the lands acquired

from Village Sokhada were also similar as a result of which, the Reference Court did not commit any error in placing reliance on previous award of Village Vansar while computing the market value of the lands acquired from Village Sokhada. According to the learned counsel for the claimants, the award of the Land Acquisition Officer by itself is no evidence unless the documents referred to in the award are produced by the acquiring authorities for the purpose of consideration of the Reference Court and as the documents referred to in the award were never produced before the Reference Court by the acquiring authorities for the purpose of its consideration, the learned Judge of the Reference Court was justified in not placing reliance on those documents while determining the market value of the lands acquired from Village Sokhada. What was stressed by the learned counsel for the claimants was that correct principles of law have been applied by the Reference Court to the proved facts and, therefore, the basis adopted by the Reference Court for determining the market value of the lands acquired from Village Sokhada should not be interfered with by the Court in

the instant appeals. With reference to Cross Objections filed by the claimants, it was argued that the previous award of the Reference Court relating to the lands of Village Vansar indicates that therein the claimants were awarded compensation at the rate of Rs.60=00 per square metre, in view of the judgment of the High Court and as the lands of Village Vansar and the lands acquired in the instant cases from Village Sokhada were similar in all respects, the claimants should be awarded similar compensation at the rate of Rs.60=00 per square metre. The learned counsel for the claimants argued that the deduction made by the Reference Court at the rate of 10% from the amount found payable to the claimants whose lands were acquired from Village Vansar is not justified at all and, therefore, the Cross Objections filed by the claimants should be allowed by the Court.

8. This Court has heard the learned counsels for the parties at length and in great detail. This Court has also considered the evidence led by the parties before the Reference Court.

9. As noticed earlier, the case of the claimants was that each claimant was earning net profit of Rs.80,000=00 per *vigha* per year from the sale of agricultural produces and, therefore, their claim for enhanced compensation should be accepted by the Court. However, no evidence could be adduced by the claimants to enable the Reference Court to determine the market value of the lands acquired in the instant cases on yield basis. Therefore, this Court is of the opinion that the Reference Court was justified in not accepting the claim advanced by the claimants that each claimant was earning net profit of Rs.80,000=00 per *vigha* per year from the sale of agricultural produces. Further, no sale deed could be produced either by the claimants or by the acquiring authorities for consideration of the Reference Court on the basis of which, the amount payable to the claimants could have been determined. In fact, no evidence worth the name was adduced by the acquiring authorities before the Reference Court and what was produced by the claimants before the Reference Court was the previous award of the Reference Court relating to the lands of Village

Vansar in support of their claim for enhanced compensation.

10. Under the circumstances, the question which arises for determination of this Court is whether the Reference Court was justified in placing reliance on the previous award of the Reference Court relating to the lands of Village Vansar while determining the market value of the lands acquired from Village Sokhada.

Section 23 of the Act enumerates the matters to be considered by the Court while determining the compensation. It provides that the claimant would be entitled to market value of the land as on the date of publication of notification under Section 4(1) of the Act. The function of the Court in determining the amount of compensation under the Act is to ascertain the market value of the land as on the date of notification under Section 4 of the Act. The methods of valuation may be (1) opinion of the experts; (2) the price paid within a reasonable time in *bona fide* transaction of purchase of the land acquired or the

lands adjacent to the lands acquired possessing similar advantages; and, (3) capitalization method or its potential value being close to the developed or developing colonies, nearness to road, etc. The general criteria for determination of compensation on the basis of market value of the acquired land is determined on the basis of sale transaction of neighbouring land having similar advantages, to reduce to the minimum the element of speculation. The Court of reference must keep in mind the following factors to determine the market value.

(1) A reference under Section 18 of the Act is not an appeal against the award and the court cannot taken into account the material relied upon by the L.A.O. in his award unless the same material is produced and proved before the Court.

(2) The award of the L.A.O. is not to be treated as a judgment of the Trial Court open or exposed to challenge before the court hearing the reference. It is merely an offer made by the L.A.O. and the material utilized by him for

making valuation cannot be utilized by the court unless produced and proved before it. It is not the function of the court to sit in appeal against award, approve or disapprove its reasoning or correct its error or affirm, modify or reverse the conclusion reached by the L.A.O., as if it were an Appellate Court.

(3) The court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the material produced in the court. Of course, the material placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4

of the Act (dates of notifications under Sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date-line of valuation (date of publication of notification under Section 4) as if the valuer is hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged in anticipation of acquisition of land).

(9) Even post-notification instances can be taken into account-(i) if they are very proximate,

(ii) genuine and (iii) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instance out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,
(ii) proximity from situation angle,

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors *vis-a-vis* land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn up for this purpose and the relevant factors may be evaluated in terms of price

variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as a norm for plus factors and unloading it for minus factors.

(14) The exercise in Cls. (11) to (13) has to be undertaken in a common-sense manner as a prudent man of the world of business would do.

(15) The evaluation of these factors of course depends upon the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide.

Thus, the award rendered by a Reference Court after considering the above facts and which has attained finality, will have to be treated as a sale instance as if the value indicated therein is the price which a hypothetical purchaser willing to

purchase the land from the open market is prepared to pay a reasonable price as on the day of notification under Section 4 of the Act. In ***Land Acquisition Officer & Revenue Divisional Officer vs. Ramanjulu & Ors., (2005) 9 SCC 594***, basic value register indicating post notification sale pertaining to small extent of lands, was relied upon on the ground that the lands acquired in those cases were situated in a different village. The Supreme Court found that Exhibit B-13 indicated that the lands were acquired for the same purpose for which the lands were acquired in the cases before the Supreme Court and the notification issued under Section 4(1) of the Act in the case covered by Exhibit B-13 was issued on December 11, 1974 whereas notification in the case on hand was issued on December 30, 1976. It was further found that the market value of the lands acquired at the rate of Rs.50/- per square yard under Exhibit B-13 had become final. What was noticed by the Supreme Court was that admittedly, the lands acquired were agricultural lands and the lands had potentiality for conversation into house sites. Placing reliance on Exhibit B-13, which related to the lands formerly

acquired, the Supreme Court granted the compensation to the claimants in the said cases.

11. Again in ***R.P.Singh vs. Union of India & Others, (2005) 7 SCC 24***, the land of Village B was acquired 18 months after acquisition of lands of Village A. The Reference Court had recorded a finding that the market value of the lands of Village B was less than that of the lands of Village A being further away. However, the High Court had fixed the compensation for the land of Village B at the same rate as was awarded for the land of Village A only because notification under Section 4 of the Act in respect of the land of village B had been issued on a later date. The Supreme Court on appreciation of the facts of the said case held that the High Court was justified in taking the said view. Thus, there is no manner of doubt that in absence of any other better evidence, the Reference Court would be justified in placing the reliance on the previous award of the Reference Court relating to the lands acquired from adjoining village. In this case, on behalf of the claimants, it was categorically asserted that the

lands of Village Sokhada were superior in fertility than the lands of Village Vansar, which were acquired earlier. It was also asserted on behalf of the claimants that the boundaries of Village Vansar and Village Sokhada were common. This assertion could not be proved to be untrue by the acquiring authorities. If the acquiring authorities were of the view that the lands of Village Sokhada and the lands of Village Vansar were not similar at all, it was open for them to adduce necessary evidence before the Court to enable the Court to reach a correct finding of fact. It may be mentioned that in exercise of power of *eminent domain,* the State Government is acquiring lands belonging to the citizens. Therefore, it is the duty of the State Government to pay adequate compensation as provided under the Act. The State Government is not expected to play a role of passive spectator or sit on the fence, but in order to enable the Court to determine the market value correctly, it must lead necessary evidence before the Court though the burden of proving the fact that the offer of the compensation made by the Land Acquisition Officer is inadequate, is on the claimants. It is worth noticing

that with the assistance of the claimants and the acquiring authorities, the Court has to determine a just amount of compensation payable to the claimants and the "State" being one of the litigants cannot refuse to assist the Court by not leading any evidence before the Court. However, where the evidence is not led by the acquiring authorities before the Court, the Reference Court would have no alternative, but to accept the evidence adduced by the claimants. In view of these principles, this Court is of the opinion that the Reference Court was justified in placing reliance on the previous award of the Reference Court, as modified by the High Court relating to the lands of Village Vansar, while determining the market value of the lands acquired from Village Sokhada. The assertion made on behalf of the claimants that the lands of Village Sokhada were superior in quality than the lands of Village Vansar, which were acquired earlier or that topography of both the lands were same or that same advantages were attached to the lands of Village Vansar and Village Sokhada, could not be demolished by the acquiring authorities at all. From the topography of the lands

acquired in the instant cases, it is evident that it is quite near to Kheda-Matar State Highway though it is not situated on Kheda-Matar road nor the National Highway was passing just near the lands acquired. There is no manner of doubt that the lands acquired in the instant cases were located at such a prime situation that they were needed by the authorities for diversion of National Highway No.8. Having regard to the location of the lands, which were acquired from Village Vansar and the location of the lands acquired in the instant case from Village Sokhada as well as the quality of the lands of both the villages, this Court is of the firm opinion that the Reference Court was justified in placing reliance on the previous award of the Reference Court relating to the lands of Village Vansar while assessing the market value of the lands acquired from Village Sokhada.

Thus, the first argument advanced on behalf of the appellants that the Reference Court was not justified in placing reliance on the previous award of the Reference Court, as modified by the High Court

relating to the lands of Village Vansar, has no substance and is hereby rejected.

12. Once the previous award of the Reference Court, as modified by the High Court relating to the lands of Village Vansar, is found to be relevant piece of evidence, it becomes evident that the same can be made basis for determining the market value of the lands acquired from Village Sokhada.

13. The plea that the Reference Court while determining the market value of the lands acquired from Village Sokhada should have taken into consideration the materials collected by the Special Land Acquisition Officer at the time of making the award, cannot be upheld on the facts and in the circumstances of the case. It is relevant to notice that the Special Land Acquisition Officer, who had made the award under Section 11 of the Act, was impleaded as respondent before the Reference Court. Before the Reference Court, no evidence was led by the Special Land Acquisition Officer. In the present case, the claimants have led both oral as well as

documentary evidence. The decision of the Reference Court is based upon the instance, namely; award of the Reference Court relating to the lands of Village Vansar. It is nobody's case that the sale deeds referred to by the Land Acquisition Officer in his award were produced before the Reference Court. Upon examining the record of the case, this Court does not find any such document at all. Thus, the Reference Court had no occasion to deal with the same. In ***Chimanlal Hargovindas vs. Special Land Acquisition Officer, (1988) 3 SCC 751,*** the Supreme Court has emphasised that a reference under Section 18 of the Act is not an appeal against the award and the Court cannot take into account material relied upon by the Land Acquisition Officer in his award unless the material is produced and proved before the Court. What is laid down in the said decision as a proposition of law is that the award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference and it is merely an offer made by the Land Acquisition Officer. It is further emphasised that the material

utilized by the Land Acquisition Officer for making his valuation cannot be utilized by the Court unless produced or proved before it and it is not the function of the Court to sit in appeal against the award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusions reached by the Land Acquisition Officer, as if it were an appellate Court. What is pointed out by the Supreme Court in the said decision for the guidance of the courts in the country is that the Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it. It may be mentioned that the view that the award made by the Special Land Acquisition Officer is merely an offer has also been expressed by the Supreme Court in ***Raja Harish Chandra Raj Singh vs. The Deputy Land Acquisition Officer & Anr., A.I.R. 1961 SC 1500.*** On examining the scheme of the Act, it becomes at once clear that the award made by the Land Acquisition Officer is based upon some inquiry to be held under Section 11 of the Act and he has then to make an award showing details set out thereunder.

What is, therefore, before the Reference Court is the finding and it is that part which becomes a subject matter of Reference to be dealt with by the Court. The other part containing the reasons given by the Land Acquisition Officer does not necessarily form part of the record unless the Land Acquisition Officer has been examined and he has stated the same which led him to come to a particular conclusion. That part can also be taken into account if both the sides agree to the same being read as a part of the evidence in the case. The award given by him becomes in the nature of an offer which stands and would be binding on the State on whose behalf that offer has been made, if it is accepted by the claimants in respect of the lands under acquisition. However, if that award is challenged by the claimants on the ground of inadequacy of compensation or grounds otherwise permissible in law, and taken to Court by a reference made under Section 18 of the Act, a judicial proceeding commences before the Court. The person who challenges the same becomes as if it were, a plaintiff in the Court and he has to show to the satisfaction of the Court that the amount awarded has

not been the proper market value of the property under acquisition and that he should be awarded compensation at a particular rate or price set out in the reference. In other words, the proceedings before the Court start afresh and it is on the legal evidence produced before it that it has to arrive at its own judicial finding and pass an award under the provisions of the Act. Therefore, the documents referred to and relied upon by the Land Acquisition Officer in his award for the purpose of coming to the conclusion that the claimants were entitled to compensation at the rate of Rs.4.50 ps. and Rs.3/- per square metre could not have been relied upon by the Reference Court unless they were produced before the Court for its perusal. The impugned award is not liable to be interfered with on the ground that materials placed before the Special Land Acquisition Officer were not considered by the Reference Court.

14. The location of the lands acquired indicates that the they were situated near Kheda-Matar road though they were not situated adjoining to the road. It further indicates that National Highway was also

not passing quite near Village Sokhada. Therefore, the Reference Court was justified in coming to the conclusion that the potentiality of the lands acquired previously from Village Vansar and that of the lands, which were acquired from Village Sokhada, were quite different. The said finding cannot be treated as erroneous one. It is relevant to notice that the lands acquired from Village Vansar were abutting on Mumbai-Ahmedabad National Highway No.8. Further before the acquisition of those lands, various agricultural lands situated in different villages were acquired and, therefore, there was pressure on the agricultural lands situated in Village Vansar. It was also found that there was fast development in the lands of Kheda District because of rapid industrial growth and commercial activities in many parts of the District. The pressure on the lands of District Kheda had increased because of various activities such as construction of roads and other commercial activities. Under the circumstances, there is no manner of doubt that while assessing the market value of the lands acquired from Village Vansar, the High Court had taken into consideration the

potentiality of those lands. This becomes quite evident if one refers to paragraph 9 of the judgment dated January 21, 1999 rendered by the Division Bench of this Court in First Appeal Nos.5263 to 5306 of 1998 by which the previous award of the Reference Court relating to the lands of Village Vansar was modified. On the facts and in the circumstances of the instant case, this Court is of the opinion that having regard to the situation of the lands acquired from Village Vansar, and that of the lands acquired in the instant case from Village Sokhada, the Reference Court was justified in placing reliance on the principles laid down by the Supreme Court in ***Kanvar Singh & Ors. (supra)***, and deducting 10% from the price of the lands of Village Vansar while determining the market value of the lands of Village Sokhada. The finding recorded by the Reference Court that the claimants would be entitled to additional compensation at the rate of Rs.49.50 paise per square metre and Rs.51/- per square metre over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.4.50 ps. per square metre and Rs.3/- per square metre, i.e. in all

Rs.54/- per square metre, cannot be regarded as erroneous so as to call for interference of this Court in the instant appeals or Cross Objections.

15. The net result of the above discussion is that this Court does not find any substance either in the First Appeals filed by the Special Land Acquisition Officer and another or Cross Objections filed by the claimants. Therefore, both the proceedings are liable to be dismissed.

For the foregoing reasons, the Appeals and the Cross Objections fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment without any avoidable delay.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra